

Homelessness NSW

# DEBT SET UNFAIR

Social Housing, Debt and Homelessness



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## DEBT SET UNFAIR- EXECUTIVE SUMMARY

*Debt Set Unfair* (the Report) examines the current operation of the social housing debt system and its impact on people experiencing homelessness.

The Report was developed from a series of consultations conducted by Homelessness NSW with people experiencing homelessness and Specialist Homelessness Services (SHSs). In total 35 people experiencing homelessness and 170 specialist homelessness services provided information which has been used to inform the content of this report and its recommendations.

The Report finds that many people experiencing homelessness developed debt in situations where they were the victim of domestic and family violence or after having their income support payments restricted by Centrelink. It also highlights that FACS Housing does not currently sufficiently identify or support tenants who are in arrears and who are at risk of eviction.

The report also examines the links between the FACS Housing negative classification system for former tenants and homelessness. It finds that a significant number of people experiencing homelessness have a social housing debt with FACS Housing, with many classified as 'less than satisfactory former social housing tenants or occupant' and who are therefore required to completely repay their debt or make continuous payments for six months before their applications can be listed on the NSW Housing Register.

The report highlights that these requirements have considerable impacts on the specialist homelessness sector and on the lives of people experiencing homelessness. As most people experiencing homelessness are not immediately

able to repay their debt to Housing NSW, they are forced to rely on the already overstretched SHS sector for assistance before their housing applications can be considered. Many people experiencing homelessness spoke of the incredible financial pressure that repayments placed upon them and how this created a sense of hopelessness and futility, with many choosing to exit completely from the housing system.

The impacts of the current social housing debt system were magnified for those experiencing homelessness who identified as having been listed as an 'unsatisfactory former social housing tenants or occupant' as a result of being evicted for non-payment of rent. People with this status are required to sustain a private tenancy for six months before their application can be approved and listed on NSW Housing Register. Homelessness NSW's consultations found that due to the current high cost and demand with the private rental sector, it is practically impossible for people experiencing homelessness to obtain private rental and that this requirement essentially prevents people from escaping homelessness.

To address the impact of the social housing debt system, the report makes a number of recommendations for reform. These include reforms to the *Residential Tenancies Act 2010* (NSW) to provide greater protections for survivors of domestic and family violence, the development of publicly available clear, written guidelines to assist potential applicants and their advocates in seeking write off or waiver of debts and the expansion of the operation of the Work and Development Scheme to former tenants with unresolved debts.

## RECOMMENDATIONS

In summary the report recommends:

### DEBT PREVENTION

1. That the NSW Government amend sections 54 and 100 of the Residential Tenancies Act 2010 (NSW) to provide greater protections for survivors of domestic and family violence.
2. That FACS Housing provide better support to victims of domestic/family violence by:
  - amending its domestic and family violence policy to contain information on the rights of survivors of domestic and family violence in relation to tenancy charges, notice and ability to appeal decisions of FACS Housing;
  - requiring Community Housing Providers abide by the FACS Housing domestic and family violence strategy;
  - providing greater training to FACS Housing staff on how best to support and respond to survivors of domestic and family violence who have fallen into arrears.
3. That FACS Housing work with Homelessness NSW and other peak agencies to develop a strategy to support tenants using the Rent

Deduction Scheme who have been breached by Centrelink.

4. That FACS Housing work with Homelessness NSW and other peak agencies to develop strategies to identify and assist clients regularly falling into arrears.

5. That FACS Housing revise its current forms relating to arrears and repayments to include specific details of the financial support options available for tenants having difficulty with repayments.

### RESPONDING TO DEBT

6. That FACS Housing introduce a community education campaign to ensure that social housing tenants' and advocates better understand their rights in relation to responding to debt.

7. That FACS Housing develop and make publicly available clear, written guidelines to assist potential applicants and their advocates in seeking write off or waiver of debts.

8. That the guidelines for waiver of debt also be drafted in a Plain-English format and in community languages to ensure their accessibility for people experiencing disadvantage;

9. That the ability to apply for write off or waiver of debts be clearly listed as an option on FACS Housing's current forms relating to arrears and repayments and on the FACS Housing and Service NSW website.

10. That FACS Housing introduce a system to enable former tenants with extenuating circumstances to reduce the amount of time in which repayments are required before an application is listed on the Housing Register.

11. That FACS Housing remove the requirement that unsatisfactory former tenants must demonstrate an ability to sustain private tenancy for 6 months before their application can be approved and listed on NSW Housing Register.

12. That the NSW Government expand the operation of the Work and Development Scheme to former tenants with unresolved debts.

13. That FACS Housing enable Community Housing Provider's more flexibility to respond to debt among former social housing tenants seeking to re-enter the system.

## INTRODUCTION

### ABOUT HOMELESSNESS NSW

Homelessness NSW is a peak not for profit organisation that works with its members to prevent and reduce homelessness across NSW. Our members include small, locally based community organisations, multiservice agencies with a regional reach and large state-wide service providers.

Key services that we provide include policy development and advocacy in working to end homelessness, public education about the changing faces of homeless people and those at risk, information about the diverse mix of initiatives operating in NSW and elsewhere and advice and support for member organisations and others about organisational change and improvement.

### CONSULTATIONS

In preparation for this Report, Homelessness NSW conducted a series of consultations with people experiencing homelessness to understand their experiences with social housing debt and how this impacted upon their ability to exit homelessness.

Participants in the consultations were asked whether they have ever had a social housing debt, how the debt occurred and how it was repaid. They were also asked to indicate where they were living while re-paying this debt and the impact of debt repayment on them and their families.

Consultations were conducted in Sydney and in Newcastle. In total over 35 homeless and formerly homeless people were consulted in preparation for this report.

Homelessness NSW also consulted Specialist Homelessness Services (SHS's) on their experiences in supporting clients who had accumulated social housing debt. Services were asked how frequently clients presented with debt, the impact of this debt and their current responses to assist former social housing tenants. In total over 170 responses were received from SHS providers from across New South Wales.

The comments and information received from both SHS providers and people experiencing homelessness have been used to inform the content of this report and its recommendations.

### REPORT STRUCTURE

The Report is divided into a number of distinct sections. Firstly, the report provides an overview of the current New South Wales Department of Community Services FACS Housing (FACS Housing) policies and procedures in relation to tenancy charges, arrears and the classification of former social housing tenants.

Secondly, the report examines the current circumstances under which many people develop debt and in particular focuses on how domestic violence, systemic failures of notice and lack of coordination between government agencies often leave tenants with no choice but to default on payments and to accumulate arrears.

The report then identifies who are the former tenants impacted by outstanding debt. It provides an overview of this debt and the lack of options within the system to have debt reduced, waived or repaid through non-financial methods such as a Work and Development Order.

## OVERVIEW OF THE CURRENT SYSTEM

### TYPES OF CHARGES

FACS Housing is able to apply tenancy related charges in accordance with the provisions of the *Residential Tenancies Act 2010* (NSW).

FACS Housing establishes separate accounts for each tenancy related charges and payments.<sup>1</sup> These include:

**Rent** - FACS Housing charges market rent for all its properties. This is the maximum rent a public housing tenant can be charged. Rent is charged to tenants on a weekly basis.

**Water usage**- Tenants are required to pay either a percentage water charge or an actual water charge. All other water related charges such as water connection charges, sewerage and other charges, and providing water in common areas are the responsibility of FACS Housing. Water usage is charged on a weekly basis.

**Repairs** – Tenants are required to pay the cost of repairing damage to their premises if they are responsible for causing the damage. FACS Housing will charge the tenant 'Tenant Repair Costs' only if the tenant has accepted liability or has sufficient evidence of the tenant's responsibility for the damage. The tenant has the right to accept or dispute liability for Tenant Repair Costs.

**Miscellaneous debts** - Miscellaneous debts occur because of various other tenancy related

### NOTIFICATION AND REPAYMENT OPTIONS

Under the *Residential Tenancies Act 2010* (NSW) and the *Housing Act 2001* (NSW), tenants have a legal obligation to pay their tenancy charges as they become due.

As per the Accounts Management Policy, FACS Housing are required to notify tenants in writing of any tenancy charges it places on their accounts and if any changes to their tenancy charges have been made.<sup>2</sup> The Policy also specifies that FACS Housing may also contact the tenant via phone or visit the property of the tenant.

In addition, FACS Housing issues a statement to tenants every three months. This statement outlines the charges, and payments made, on all of the tenant's accounts.

Tenants can pay their tenancy charges by any of the following methods:

- Arranging an automatic payment from their Centrelink payments (Rent Deduction Scheme)
- Paying at a Post Office using a payment card
- BPAY
- Internet
- Direct Debit from an account

charges, such as bank fees for dishonoured payments. FACS Housing will add charges to this account as they become due.

**Combined former debt** - Where a current tenant has had a previous tenancy with FACS Housing, it will transfer all outstanding debts from the tenant's former accounts.

### DIFFICULTIES IN REPAYMENT OF CHARGES

As per the Accounts Management Policy, it is the tenant's responsibility to notify FACS Housing of financial difficulties in repaying charges. FACS Housing can then negotiate with the tenant for a 'reasonable repayment arrangement' or in certain circumstances consider a lesser payment arrangement.<sup>3</sup>

<sup>1</sup> For more information on the types of charges on a FACS Housing NSW policy see the Tenancy Charges Policy at <http://www.housing.nsw.gov.au/forms,-policies-and-fact-sheets/policies/tenancy-charges-policy>

<sup>2</sup> For more information on the types of notifications provided see the Accounts Management Policy at <http://www.housing.nsw.gov.au/forms,-policies-and-fact-sheets/policies/account-management-policy>

Where FACS Housing is unable to negotiate a 'reasonable repayment arrangement', it may seek either a Specific Performance Order or an order to terminate the tenancy from the NSW Civil and Administrative Tribunal. In making this decision the NSW Civil and Administrative Tribunal will consider:

- the reasons for the arrears;
- any hardship to the tenant;
- the ability of the tenant to remedy the arrears and maintain regular rental.

If a tenant is evicted on the grounds of rent arrears then they are likely to be classified as an 'unsatisfactory former social housing tenant'.

## DEBT AND FUTURE TENANCY

If a tenant leaves their property owing arrears and reapplies for social housing in the future, FACS Housing may restrict the services available to the former tenant, including placement on the NSW Housing Register. FACS Housing and community housing organisations participating in Housing Pathways use this register to offer housing when a suitable property becomes available.

When a social housing tenancy/ occupancy is terminated, FACS Housing classifies the tenant into one of the following categories: <sup>4</sup>

CATEGORY	DEBT RELATED	CLASSIFICATION OF FORMER TENANTS
Eligible for a statement of satisfactory tenancy	Have a current nil or credit balance on all accounts (rent, water, repairs and former tenancies)	No restrictions on re-application or placement on the NSW Housing Register.
Satisfactory former social housing tenants	Owing the provider less than \$500 in rent, repairs, water usage or other charges.	Future applications for tenancy will not be made live on the NSW Housing Register, unless debt repaid in full and if they also have a satisfactory payment performance for the 12 months prior to their assessment.  If the former tenant has not maintained repayment arrangements  Requires regular repayments for three months.
Less than satisfactory former social housing tenants or occupant	Moved out owing the provider more than \$500 in rent, repairs, water usage or other charges	Future applications will not be considered on the NSW Housing Register unless: <ul style="list-style-type: none"> <li>• The debt is repaid in full or regular repayments have been made for 6 months. If payments stop at any stage the application will be closed.</li> <li>• The 6-month period starts from the date the application was submitted or the date the former tenancy debt was acknowledged (whichever occurs later).</li> </ul>
Unsatisfactory former social housing tenants	Applies if the tenant has been evicted for breaches in their tenancy agreement, including for rental arrears.	Must demonstrate that a private tenancy has been sustained for at least 6 months before the application can be approved and listed on NSW Housing Register.

It should be noted that Homelessness NSW unsuccessfully sought information from FACS Housing on the current numbers of listings on the NSW Housing

Register of 'Less than satisfactory former social housing tenants or occupant' and 'Unsatisfactory former social housing tenants'.

<sup>3</sup>For evidence considered by FACS Housing in determining whether tenants are eligible for reduced payment arrangements, see the Social Housing Eligibility and Allocations Policy Supplement at <http://www.housingpathways.nsw.gov.au/additional-information/policies/social-housing-eligibility-and-allocations-policy-supplement#specific>

<sup>4</sup>Former tenants may be classified in each of the categories for a variety of reasons other than debt. For more information on former tenant classification, see the Social Housing Eligibility and Allocations Policy Supplement as above

## REQUESTING A REVIEW

Decisions made by FACS Housing in relation to former tenant debts and former tenant classification, the removal from the NSW Housing Register and the reactivation of closed applications are reviewable on request by a client.

There are two levels of appeal:

- First tier – internal review by FACS Housing, and
- Second tier – independent review by the Housing Appeals Committee

Internal reviews conducted by FACS Housing are generally decided within 20 working days from the date FACS Housing receives a client's application for review. If a client believes the decision made by FACS in the first tier appeal is incorrect, then they can ask the Housing Appeals Committee to review the decision.<sup>5</sup>

## HOW DOES DEBT DEVELOP?

This section examines the circumstances under which many of the people consulted as part of the report first developed debt.

Homelessness NSW notes that there are considerable issues in relation to the identification and attribution of incorrect (or at least disputable) charges at the end of a tenancy which needs to be addressed by FACS Housing.

Homelessness NSW's consultations also found that many people have accrued debt in circumstances where it should not have been imposed in the first place. This includes instances of domestic or family violence or when systemic

## CASE STUDY

Due to her partner's violent behaviour, Kim and her three children were forced to leave their social housing property. Fear of her partner prevented Kim from removed her belongings and thereby ending her tenancy. She also incurred \$20,000 worth of debt as a result of her partner's damage to the property.

Due to the debt, she did not have other housing options. She was in a refuge for about 7 months as she was not eligible to be listed on the Housing Register. During this time, she self-medicated with prescription drugs, was very depressed and crashed her car into a tree. She was transferred to a refuge closer to her children's school, to assist them to attend school.

Kim and her children were homeless for approximately 12 months before a SHS was able to advocate for the debt to be reduced to \$6000 and then with NGO brokerage support, this debt was further reduced to \$4,000.

When the debt was \$4,000, FACS Housing allowed an 'Acknowledgement of Debt Repayment Plan' to be signed by Kim. Kim applied and was granted financial assistance through Start Safely to help her secure private rental.

failures of notice and lack of coordination between government agencies has left tenants with no choice but to default on payments and to accumulate arrears.

### DOMESTIC AND FAMILY VIOLENCE AND DEBT

*"A typical example of debt is with a client experiencing domestic and family violence who has escaped to safety. The perpetrator of violence causes the damage... the tenant returns to debt and/or becomes homeless until the debt is paid". SHS provider*

*"I had a client with a large debt after she left a property that was in her name after experiencing domestic violence. We tried to raise this with Housing workers but we had no avail. While repaying*

*the debt, the client had to cycle through services and was further traumatised by the system". SHS provider*

Homelessness NSW does not believe it is appropriate for social housing debt to be imposed in circumstances of domestic and/or family violence. Among those who participated in this report, this was one of the most reported reason for arrears and debt occurring. Approximately one-third of those experiencing homelessness consulted by Homelessness NSW detailed stories where domestic and family violence was a factor in their accumulation of arrears.

People experiencing homelessness and services reported debt developing in domestic and family violence situations in a

<sup>5</sup>For a detailed discussion of this point see Victorian Government, Royal Commission into Family Violence, Summary and Recommendations of Final Report (2016) pg 123



number of different ways. Firstly, many indicated that they had fallen into arrears as a result of being forced to leave their social housing property without giving the required notice. It is well established that survivors of domestic and family violence often need to quickly leave their property in order to keep themselves and their family safe.<sup>6</sup> As one service told Homelessness NSW in relation to notice “*nine times out of ten it is the least of a woman’s worries when she needs to vacate because of domestic violence*”. However, under section 96 and 97 of the *Residential Tenancies Act 2010* (NSW), social housing tenants are required to give 14 days’ notice for a fixed-term lease or 21 days for a continuous lease before leaving a tenancy. If a tenant vacates without giving sufficient notice, FACS Housing will charge rent for the full notice period.

The need for greater flexibility around notice for survivors of domestic and family violence has recently been recognised by the report of the Victorian Royal Commission into Family Violence which recommended the *Residential Tenancies Act 1997* (VIC) be amended to ensure that survivors are not held legally liable for debts that are properly attributable to perpetrators of family violence.<sup>7</sup>

Currently in NSW survivors of domestic and family violence have two options to avoid occurring liability in the above situations. Firstly, under section 100 of the *Residential Tenancies Act 2010* (NSW) if the tenant has obtained a

## CASE STUDY

Sarah is a single mum with 5 children with a social debt of \$1900. Because of this debt she is unable to be re-housed with FACS Housing and she was living in a property which does not have room for all of her children (with 2 of her children forced to reside elsewhere).

Sarah was recently forced to move into a cabin in a caravan park. However, this has affected the children’s schooling and the customer’s university. Sarah has started a payment plan with FACS Housing so that she can rectify her debt and be once again eligible for social housing.

final Apprehended Violence Order (AVO) with an exclusion order they are able to provide 14 days notice without needing to pay the rent for the full notice period.<sup>8</sup> However many survivors do not apply for an AVO, often fearing that the violence will increase as a result of doing so. As outlined in Women’s Legal Services NSW’s submission to the statutory review of the *Residential Tenancies Act*, it can take up to a year before a final AVO is made by which time the social housing property is likely to have been abandoned by the victim.<sup>9</sup> Alternatively, a tenant can appeal the imposition of charge for the full notice period to FACS Housing. However, the large number of consumers and services reporting debt occurring as a result of leaving their tenants as a result of domestic violence and providing to FACS Housing insufficient notice highlights that this appeal is not accessible or suitable given the reality of domestic violence.

In response to this issue, the New South Wales Fair Trading in its

*Residential Tenancies Act 2010 – Statutory Review* recommended extension of section 100 of the *Residential Tenancies Act 2010* (NSW) to accept provisional or interim AVO’s.<sup>10</sup> While supportive of this extension, Homelessness NSW does not believe this adequately addresses situations in which survivors of domestic and family violence do not seek an AVO. Homelessness NSW recommends extending section 100 of the *Residential Tenancies Act 2010* (NSW) to facilitate the ending of tenancy in instances where a qualified professional has provided a statutory declaration detailing domestic and family violence.<sup>11</sup> As noted in the Women’ Legal Service NSW submission to the Review of the *Residential Tenancies Act*, under the *Migration Regulations 1994*, the Department of Immigration and Citizenship is currently able to make findings as to whether an applicant for permanent residency has experienced family violence based on evidence, including statutory declarations from a list of

<sup>7</sup> Victorian Government, Royal Commission into Family Violence, Summary and Recommendations of Final Report (2016) pg 123

<sup>8</sup> Note that a tenant may also make an application to the NSW Civil and Administrative Tribunal to end their tenancy, however compensation may still be required in these circumstances.

<sup>9</sup> See Women’ Legal Service NSW, Submission to Statutory Review of the Residential Tenancies Act, 29 January 2016 accessed at: [http://www.fairtrading.nsw.gov.au/mobile0c9a66/biz\\_res/ftweb/pdfs/About\\_us/Have\\_your\\_say/Residential\\_tenancy\\_laws\\_review/Womens\\_legal\\_services\\_nsw.pdf](http://www.fairtrading.nsw.gov.au/mobile0c9a66/biz_res/ftweb/pdfs/About_us/Have_your_say/Residential_tenancy_laws_review/Womens_legal_services_nsw.pdf)

<sup>10</sup> New South Wales Fair Trading, Residential Tenancies Act 2010 – Statutory Review (2016)

<sup>11</sup> See Women’ Legal Service NSW, Submission to Statutory Review of the Residential Tenancies Act,

<sup>12</sup> NSW Family and Community Services, Domestic and Family Violence NSW Department of Family and Community Services Housing NSW Policy Statement (2014)

professionals. Homelessness NSW believes this same criterion should apply to determinations under the *Residential Tenancies Act 2010* (NSW)

People experiencing homelessness and SHS providers also reported high numbers of debt were occurring in circumstances where the perpetrator of domestic violence was a co-tenant continuing to remain in the property to cause damage or accumulate arrears. Currently under section 54 of the *Residential Tenancies Act 2010* (NSW), co-tenants are liable for the actions and damage caused by the other tenant. This section has considerable impact on those experiencing domestic and family violence and on the development of debt. As one SHS informed Homelessness NSW *"My current experience with social housing and debt is that Land and Housing Corporation check the property in some cases 3 – 6 months after the tenant has left. This becomes an issue in relation to domestic violence as the perpetrator often vandalises the property even when FACS Housing knows that the tenant no longer resides there. The tenant is then forced to be lumbered with the debt. I currently am assisting three clients with this scenario"*. In order to prevent debt being developed as a result of the co-tenant/perpetrator, Homelessness NSW recommends that section 54 of the *Residential Tenancies Act 2010* (NSW) be amended to enable exception to liability in circumstances of domestic and family violence.

While FACS Housing currently has a domestic and family violence

## CASE STUDY

Robert had been living in social housing for over 5 years. He is currently on Newstart allowance and he had his rent automatically deducted using the Rent Deduction Scheme.

Robert was recently breached by Centrelink for failing to attend a number of appointments 'without a valid reason'.

As his social housing rent was automatically deducted using the Rent Deduction Scheme and the lack of Centrelink payments meant he fell into a cycle of debt which ultimately resulted in being evicted from his tenancy. Robert is now homeless and sleeping rough.

strategy,<sup>12</sup> the strategy does not specify any of the rights of survivors of domestic and family violence in relation to tenancy charges, notice or ability to appeal decisions made by FACS Housing. Nor does the policy currently apply to Community Housing Providers.

**RECOMMENDATION:** That the NSW Government amend sections 54 and 100 of the *Residential Tenancies Act 2010* (NSW) to provide greater protections for survivors of domestic and family violence.

**RECOMMENDATION:** That FACS Housing provide better support to survivors of domestic/family violence by:

- amending its domestic and family violence policy to contain information on the rights of survivors of domestic and family violence in relation to tenancy charges, notice and ability to appeal decisions of FACS Housing; requiring Community Housing Providers abide by the FACS Housing domestic and family violence strategy;
- providing greater training for FACS Housing staff on how

best to support and respond to survivors of domestic/family violence with arrears.

## CENTRELINK BREACH AND SOCIAL HOUSING DEBT

*"My rent comes directly out of my Centrelink payment. I am on unemployment benefits, so I have to look for 10 jobs per week which is a lot. I worry that I will be sick and unable to look for that amount of jobs and so I will get breached. If I get breached, then I will have a debt which would be impossible for me to repay"*. Homeless participant

Many of those consulted by Homelessness NSW accrued debt and/or were evicted from social housing after being breached by Centrelink. The vast majority of people in social housing are reliant on Centrelink payments for income with many tenants having their rent payments automatically deducted from their Centrelink payments through the Rent Deduction Scheme. The NSW Government is considering making the currently voluntary scheme mandatory.<sup>13</sup>

While some of those consulted for this report indicated the Rent

<sup>13</sup> See NSW Department of Family and Community Services' Rent Reform to Stop Homelessness Churn (Media Release 31 March) accessed at [http://www.facs.nsw.gov.au/about\\_us/media\\_releases/rent-reform-to-stop-homelessness-churn](http://www.facs.nsw.gov.au/about_us/media_releases/rent-reform-to-stop-homelessness-churn)

Deduction Scheme provided them with some protection from falling into arrears, such protection is undermined when an individual is breached by Centrelink. The net effect of a Centrelink breach for many housing tenants is they are unable to pay rent and are at risk of losing their tenancy. Many others spoken to by Homelessness NSW went to extreme measures to ensure they could sustain their tenancy after a breach had occurred: *“When I was breached, I had no choice. Food and my medication were luxuries that I could not afford. I barely ate for a few weeks so that I could keep paying my rent. I would rather be hungry than back on the street”*. Another person experiencing homelessness told Homelessness NSW *‘It is a vicious and unnecessary cycle, because you don’t get paid by one government agency then you can’t afford to pay another. Paul is robbing Peter!’*.

Homelessness NSW is not aware of any protocols in place between Centrelink and state housing authorities that enables Centrelink to communicate when a person has been breached and will therefore be unable to pay rent via the Rent Deduction Scheme. Nor does FACS Housing appear to have any specific support measures for clients who have their Centrelink payments breached and who will therefore fall into rent arrears.

**RECOMMENDATION:** That FACS Housing work with Homelessness NSW and other peak agencies to develop a strategy to support tenants using the Rent Deduction Scheme who have been breached by Centrelink.

## SUPPORTING TENANTS IN ARREARS

It was apparent from Homelessness NSW’s consultations, that not enough is being done to proactively identify and support tenants who regularly fall into rental arrears. As detailed above, FACS Housing’s Account Management Policy indicates that it is the primary responsibility of the tenant to notify FACS Housing of financial difficulties in repaying charges. The Account Management Policy does specify that FACS Housing may refer tenants to financial and other support services to assist them in managing their arrears. Yet, none of the participants in Homelessness NSW’s consultations were provided with or were aware of others who had been provided with such support.

At each consultation with people experiencing homelessness, numerous people told stories of how their arrears had ultimately led to their eviction from social housing and facilitated their fall into homelessness. This is illustrated by the following story shared with Homelessness NSW *“I went on holidays and while I was on holiday my partner gambled away the rent money and then left me to pick up the bill as my name was on the tenancy. I came back and had a massive debt that I could not repay so I was evicted. After I was evicted, I had to wait for two years before I could get back on the waiting list as I couldn’t afford to make regular payments and then I had to wait another six years before actually getting a place. I had never been homeless before and it was pretty scary to fall so far so quickly. I started off staying with friends until I had overstayed my welcome. I then lived out of my car and then survived from going from service to service. This could*

*have been avoided if I had some way of getting support rather than being evicted”*. One SHS provider told Homelessness NSW, *“many of the clients we support enter our service and homelessness because of the failure of services to support people when they are vulnerable. One of these service failings is in relation to debt and eviction”*.

Homelessness NSW recommends that FACS Housing develop

a more effective process of identifying tenants who regularly fall into rental arrears, with a view to providing these tenants appropriate referrals to financial counselling and support agencies. Homelessness NSW has worked with FACS Housing around process for early referral to SHS’s, consideration could be given to extending this to Centrelink and other agencies. In addition, FACS Housing should amend its notifications of arrears and ‘Acknowledgement and Agreement to Repay Debt’ form include specific details of financial support available to tenants who are have difficulties paying charges, including financial counsellors and information on how tenants can apply for waiver and work and development order (discussed further below).

**RECOMMENDATION:** That FACS Housing work with Homelessness NSW and other peak agencies to develop strategies to identify and assist clients regularly falling into arrears

**RECOMMENDATION:** That FACS Housing revise its current forms relating to arrears and repayments include specific details of the financial support and options available for tenants having difficulty with repayments (including the ability to apply for waiver).

## DEBT AND HOMELESSNESS

### INTRODUCTION

As detailed in FACS Housing’s Social Housing Eligibility and Allocations Policy Supplement, upon exiting social housing, all tenants are given a classification that impacts their future placement on the NSW Housing Register.

If a tenant leaves their property owing arrears then they are likely to be classified as ‘satisfactory’, or receive a negative classification of a ‘less than satisfactory’ or ‘unsatisfactory’ former tenant.

Homelessness NSW’s consultations revealed that a considerable number of people experiencing homelessness had negative classifications and were unable to re-enter to social housing system.

### FREQUENCY OF DEBT AMONG PEOPLE EXPERIENCING HOMELESSNESS

Given the transient nature of homelessness, it is not possible provide a specific figure of the number of people experiencing homelessness in New South Wales who have debt with FACS Housing. As detailed above, Homelessness NSW unsuccessfully sought to obtain data from FACS Housing on the numbers of former tenants who currently have negative classifications.

Despite the challenges of accurately estimating numbers 167 of the 170 specialist homelessness services consulted by Homelessness NSW were currently supporting clients with social housing debt. Over 70 per cent (n=143) of these services indicated that they frequently were

### CASE STUDY

Phil is a 52-year-old man who is currently sleeping rough and couch surfing in the inner Sydney city area.

Phil was previously housed in a Community Housing unit where he lived for 10 years until he was evicted because of rental arrears. Upon eviction, Phil owed roughly \$1000 in arrears and maintenance amount to \$4000.

Phil has been advised that in order to reapply for social housing he would be required to set up a repayment plan to reduce his debt. He is willing to acknowledge the debt for the rent arrears but believes the maintenance costs are unfair, grossly high and forced upon him.

As he is now living on the streets, temptation to use illicit substances is at an all-time high, and being homelessness is having a considerable negative impact on both his physical and mental health.

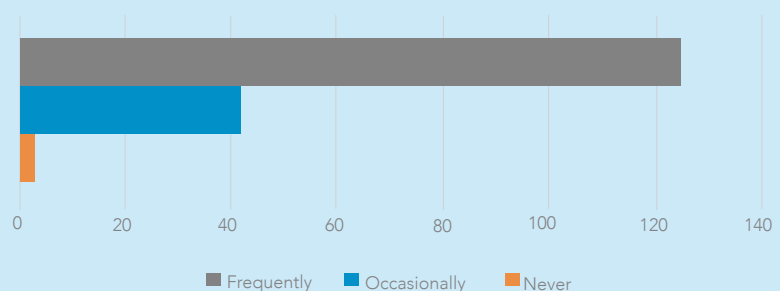
required to assist clients with social housing debt with fewer than 2 per cent (n=3) detailing that they never supported a client in this situation.

This data was supported by the lived experiences of those experiencing homelessness who participated in Homelessness NSW’s consultations. At each consultation conducted by Homelessness NSW, numerous people shared stories of social housing debt as causing and exacerbating their homelessness. As one person confirmed “Most

*of us have had a housing debt at some time or another. It is just a fact of life when you are homeless”.*

As part of its consultations with SHS providers, Homelessness NSW also asked services to report on the highest levels of social housing debt they had supported clients with. Services reported exceedingly high levels of social housing debt was owed, with many debts shared over \$30,000, with the highest debt shared of \$150,000. In circumstances of such high debt, the debt essentially remains with the tenant

### HOW OFTEN DO YOU HAVE CLIENTS WITH SOCIAL HOUSING DEBT?



## HOW DEBT IS RESPONDED TO

The considerable number of people experiencing homelessness with debt and the negative classification system places considerable pressure upon the SHS sector and on the lives of people experiencing homelessness.

This section will explore the impact of the negative classification system on former tenants currently experiencing homelessness and services working with them. It will also explore options such as the Work and Development Order scheme as ways of ensuring the system is more equitable for vulnerable groups such as those experiencing homelessness.

### WAIVER AND WRITE-OFF OF DEBT

Homelessness NSW believes that those experiencing homelessness should be eligible to have their debt waived or written off by FACS Housing. Under current practice, FACS Housing will consider an application for waiver or reduction in the amount of debt owed if the former tenant is able to demonstrate extenuating circumstances. However, the ability to apply for waiver is not publicised by FACS Housing and no clear criteria exists to demonstrate what evidence will be considered in making this determination. Unsurprisingly none of the people experiencing homelessness consulted by Homelessness NSW were aware of the possibility of appealing for waiver.

Tellingly, we received numerous responses from SHS providers who

were not even aware of a process to apply to FACS Housing to have debt waived, *"I have never applied to FACS for a waiver as I have never been told such an option existed. I have worked with FACS many times on reducing the debt but never for completely wiping of the debt"*. From Homelessness NSW's consultations it is also apparent that the treatment of an application for waiver is dependent upon a service's relationship with their local FACS Housing representative. One service told us *"we have a great relationship with local housing staff- it is pretty rare that we are unable to get debt completely wiped"*. Many other SHS's reported that the criteria used by FACS Housing for write-off and waiver are unclear with services receiving inconsistent treatment of similar applications.

The hidden nature and inconsistent treatment of applications for waivers for former tenants can be contrasted by the NSW Government's response to the issue of penalty notices under the Fines Act 1996 (NSW). In 2011, the NSW Government in consultation with services working with disadvantaged communities, developed the 'Guidelines for Writing Off Fines' which provides guidance to decision makers, services and fine defaulters on the circumstances under which the State Debt Recovery Office will make the determination to write-off a penalty notice. Importantly these guidelines are publicly available.

Homelessness NSW believes FACS Housing should similarly work with relevant peak agencies and

groups working with vulnerable groups to develop guidelines for the writing-off of debt among former social housing tenants. These guidelines should be made publicly available and the ability to apply for a write-off be listed on the 'Acknowledgement of Debt' form and on the Service NSW website.

**RECOMMENDATION:** That FACS Housing introduce a community education campaign to ensure that social housing tenants and advocates better understand their rights in relation to debt.

**RECOMMENDATION:** That FACS Housing develop and make publicly available clear, written guidelines to assist potential applicants and their advocates in seeking write off or waiver of debts. These guidelines should be developed in consultation with peak agencies and other groups working with disadvantaged communities.

**RECOMMENDATION:** That the guidelines for waiver of debt also be drafted in a Plain-English format and in community languages to ensure their accessibility for people experiencing disadvantage.

**RECOMMENDATION:** That the ability to apply for write off or waiver of debts be clearly listed as an option on FACS Housing's current forms relating to arrears and repayments and on the FACS Housing and Service NSW websites.

## REPAYMENT OF DEBT

*“Clients experiencing homelessness often have a myriad of other disadvantage factors they are dealing with and expecting them to comply for 6 months without default is not reasonable. It also forces them to remain homeless for 6 months before they can reapply”. SHS service*

Homelessness NSW believes that the current system in relation to former tenants is essentially preventing people from exiting homelessness. If a former tenant is not immediately able to repay their debt then they are likely to be required to make repayments for 6 months before being placed back on the NSW Housing Register. From Homelessness NSW’s consultations it is apparent while unable to access social housing, the only outcome possible for a large number of former tenants is homelessness. As one SHS provider told Homelessness NSW, *“If people are unable to re-access social housing, then there are often no options left for them. Generally, they are not a preferred candidate in an overcrowded private rental market and often they end up in unsafe situations whilst waiting to re-access housing”*. One person experiencing homelessness told Homelessness NSW *“I am sleeping on a friend’s couch at the moment. I can’t get a rental property so my only option is to wait until I can get back on the Housing Register”*.

Many people experiencing homelessness consulted by Homelessness NSW were attempting to re-enter the system but struggling with the financial pressure repayments placed on them *“Government does not*

## CASE STUDY

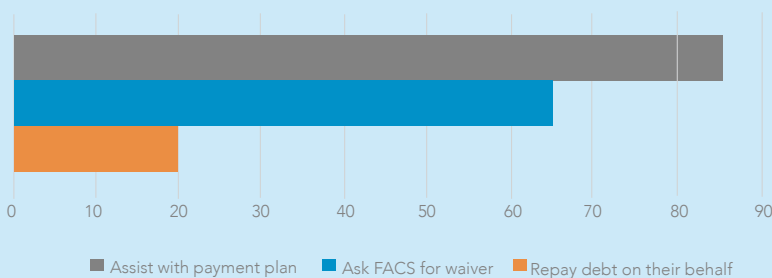
Laura accrued \$3000 rental arrears during an admission to a mental health inpatient unit. When Laura was discharged from hospital, she had been evicted from the property resulting in the client becoming homeless. In order to once again be eligible for housing, Laura had to enter into a regular payment plan with FACS Housing and to reduce the debt under \$500. Laura was making regular repayments of \$20 per fortnight, but her lack of stable housing and moving from crisis service to crisis service had a detrimental effect on her mental health. To cope financially Laura commenced unsafe sex work and relapsed into drug use.

*understand what \$20 can mean for someone on the street. I have to pay \$20 per week to pay off a debt. For them it is nothing. For me it is a choice of whether to eat or not”*. Another person experiencing homelessness consulted by Homelessness NSW spoke of not taking medication so he could afford repayments *“After Housing stuffed up I organised to pay \$25 per week. I have a chronic back and neck injury and I could have used that money for pain relief but couldn’t”*. Others felt ‘defeated by the system’ as a result of the debt and gave up on seeking housing all together. As one person told Homelessness NSW *“Lots of people don’t pay. They just leave the system and don’t come back.*

*Living on the streets can be bad but there are no hassles from Housing”*.

The large number of people in homelessness services unable to exit because of social housing debt is placing considerable pressure on an already overfull and under resourced sector.<sup>14</sup> Services consulted by Homelessness NSW spoke of considerable impacts upon the resourcing and capacity of specialist homelessness services to respond to debt. As one service explained, *‘SHS’s get drawn into assisting clients resolve their housing debts- it is a waste of time and resources’*. As indicated in the table below, 85 of the services consulted by Homelessness NSW

### HOW DO YOU SUPPORT CLIENTS WITH DEBT?



<sup>14</sup> Information from the latest Australian Institute of Health and Welfare’s (AIHW) Specialist Homelessness Services 2014-15 Annual Report indicates that 329 requests for assistance were unable to be met by specialist homelessness services every day

assisted clients to develop payment plans to repay their social housing debt, 65 advocated for client's debt to be waived by FACS Housing and 20 used their own services funding to repay the debt.

The pressure placed on people experiencing homelessness and SHS providers is further compounded by the requirement that if re-payments by former tenants stop at any stage their housing application will be closed. As one SHS asked 'Homelessness NSW 'simply, if they don't have stability in their life, how can they maintain a stable repayment "plan"?'.

Homelessness NSW believes that these considerable impacts can be reduced by implementing a system by which a former tenant can apply for a reduction in the amount of time repayments are required before an application is listed on the Housing Register. Such a system could be open to applications from people currently or at risk of experiencing homelessness or who have other extenuating circumstances such as domestic violence.

**RECOMMENDATION: That FACS Housing introduce a system to enable former tenants with extenuating circumstances to reduce the amount of time in which repayments are required before an application is listed on the Housing Register**

## CASE STUDY

John had a debt to Housing NSW of approximately \$2000. The debt is for rent arrears that accrued after John's property was destroyed by flooding.

He was no longer able to stay at the property and approached FACS Housing for repairs without success. John then decided to stop paying rent, but did not end his tenancy properly. John was evicted but not before he accrued significant rent arrears.

Three years later, John approached FACS Housing for assistance with Temporary Accommodation and to lodge an Application for Housing Assistance. At this time, he discovered his Housing debt and his status as a former tenant.

John's Housing application was suspended and has been for 12 months at time of writing, pending an appeal. In the meantime, John has been staying in a boarding house where he is unable to have his children stay as much as he would like. Their mother is willing to give more access, but the boarding house is not an appropriate environment for young children.

## UNSATISFACTORY FORMER SOCIAL HOUSING TENANTS

*"Where would I ever get private rental in Sydney? Seriously?!"  
Homeless participant.*

The impacts of the current social housing debt system are magnified for people experiencing homelessness identified as having been listed as an 'unsatisfactory former social housing tenants or occupant' as a result of being evicted for non-payment of rent. Under the current system, those with this status must demonstrate an ability to sustain private tenancy for 6 months before their application can be approved and listed on NSW Housing Register. Homelessness NSW believes this requirement is completely inappropriate under current housing conditions. Anglicare's 2016 Rental Affordability Snapshot, that looked at almost 15,000 rental listings advertised across one

weekend, found that in Greater Sydney less than 0.5 per cent of offerings were considered appropriate and affordable for those on government income support payments.<sup>15</sup> Numerous people experiencing homelessness also spoke of the impracticality of expecting people to sustain private tenancies for 6 months and the belief that this requirement was in place to reduce the number of people on the NSW Housing Register. In light of the current housing affordability crisis, the conditions currently attached to the 'unsatisfactory former social housing tenants or occupant' essentially prevent people from escaping homelessness. As detailed by one SHS provider *"the main reason to apply for public housing is because people on low income cannot afford the private market"*.

<sup>15</sup> Anglicare Australia, Rental Affordability Snapshot 2016 (April 2016) accessed at <http://www.anglicare.asn.au/docs/default-source/default-document-library/rental-affordability-snapshot-2016.pdf?sfvrsn=7>

**RECOMMENDATION:** That FACS Housing remove the requirement that unsatisfactory former tenants must demonstrate an ability to sustain private tenancy for 6 months before their application can be approved and listed on NSW Housing Register.

### NON-FINANCIAL REPAYMENT OF DEBT

*“Having a non-financial way of repaying the debt would be ideal. A lot of the time, the money the clients receive from Centrelink is barely enough to pay rent let alone afford other bills, food, medication and so forth. Implementing an alternate pathway such as Work and Development order would be worth a trial. The current policy and procedures in place clearly are not achieving the intended goal”* SHS provider.

*“Yes, a lot of people spin right out when they get a letter from Housing telling them that they have a debt. I think it would take a lot of stress off people if they knew that they could re-pay by a WDO”* Homeless participant

It was apparent from Homelessness NSW’s consultations that both services and people experiencing homelessness would benefit from the implementation of non-financial methods to re-pay outstanding debt with FACS Housing. During Homelessness NSW’s consultations many services and people experiencing homelessness contrasted the current debt system to the operation of the Work and Development Order systems that successfully operate in relation to penalty notices. As detailed above, many of those consulted by Homelessness NSW were stuck in a

### CASE STUDY

Peter had over \$17,000 in penalty notices which had been accrued during the 10 years he experienced homelessness. In addition to being homeless, Peter has struggled for many years with a drug addiction and mental illness.

In 2015, Peter made an application to be on the Housing Register and decided to address his outstanding fines. He successfully made an application for a WDO and he was able to gradually repay his debt through attendance in a drug and alcohol treatment program. Peter is now addiction free and has continued to stay in the program even though he has repaid his debt.

Peter now acts to mentor and support new members of the support group. He credits the WDO scheme as giving him the encouragement to enter treatment programs.

perpetual state of homelessness as they were unable to afford to repay debt to enable them to be placed upon the NSW Housing Register.

The Work and Development Order (WDO) Scheme operates in NSW to allow vulnerable people to clear up to \$1000 a month from their fines by participating in medical, mental health or drug and alcohol treatment, counselling (including case management), financial counselling, vocational, educational or life skills courses, or voluntary work. Fines are cleared at different rates depending on the activity. The rates range from \$30-\$50 per hour. In order to be eligible for a WDO, they must be able to demonstrate that they are homeless, have a mental illness, intellectual disability, cognitive impairment, serious addiction to drugs or alcohol, or are in acute financial hardship.

A 2015 review of the Work and Development Order Scheme prepared for the NSW Department of Justice found:

- 95% of approved organisations said the scheme had helped reduce the level of stress and anxiety their clients felt about their fines debt; and
- 87% of approved organisations said the scheme had enabled clients to address the factors that made it hard for them to pay or manage their debts in the first place.<sup>16</sup>

The Review also found that WDO’s provided an effective incentive for clients who might otherwise be reluctant to engage (or stay engaged) in counselling or treatment and the participants overwhelmingly felt the program allowed them to regain control of their lives and improved their feelings of self-worth and self-efficacy.<sup>17</sup>

The review’s positive findings of the operation of WDO’s was shared by services and people experiencing homelessness that Homelessness NSW consulted. One SHS provider told Homelessness NSW, WDO’s ‘give a feasible option to clients

<sup>16</sup> INCA Consulting, Evaluation of the Work and Development Order Scheme: Qualitative Component, May 2015) Accessed at [http://www.legalaid.nsw.gov.au/\\_data/assets/pdf\\_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf](http://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf)

<sup>17</sup> Evaluation of the Work and Development Order Scheme: Qualitative Component



experiencing financial hardship. It gives relief from financial hardship and removes their negative classification at the same time, so they can move towards stable accommodation. It has the added benefit of often re-engaging clients with services'. One person experiencing homelessness said being on a WDO 'lets you give something back to the community and you don't always feel like a drain on the system'.

Homelessness NSW notes that the Community Housing Provider, Bridge Housing in May 2016, launched the 'Hand-Up' program. Hand-Up is based on the WDO model and involves Bridge Housing offering tenant's

alternative, non-monetary ways of "repaying" their rental arrears, including by enrolling in study, volunteering in the community, or undertaking treatment to address their underlying issues. Homelessness NSW believes the NSW Government should similarly expand the operation of the WDO scheme to include those with social housing debt. Homelessness NSW further recommends that similar criteria for participation, repayment rates and approved activities be adopted in relation to those with social housing debt.

**RECOMMENDATION: That the NSW Government expand the operation of the Work and Development Scheme to former tenants with unresolved debts.**

## CONCLUSION

This report has outlined a variety of options available to address the considerable impact of social housing debt on vulnerable former tenants.

The introduction of measures such as the extension of the Work and Development Order system and reforms to the internal processes of FACS Housing will greatly reduce the financial pressure faced by tenants in arrears.

There may be other options for reforming the Social Housing debt system not included in this Report. However, Homelessness NSW hopes that the Report will serve as a starting point for dealing with issues that specialist homelessness service and people experiencing homelessness are currently facing.

This Report will be submitted to the NSW Minister for Family & Community Services and Minister for Social Housing and relevant NSW Government departments and agencies.